

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Perry L. Johnson

Serial No.: 10/500,179

Filed: December 8, 2004

For: METHOD FOR COMPLIANCE OF STANDARDS REGISTRAR
WITH ACCREDITATION AGENCY REQUIREMENTS

Group Art Unit: 3624

Examiner: Luis F. Santiago

Attorney Docket No.: PJI 0104 PUSA

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Mail Stop Appeal Brief - Patents
Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an Appeal Brief from the final rejection of claims 1 and 9-12 of the Office Action mailed on August 16, 2010 for the above-identified patent application.

I. REAL PARTY IN INTEREST

The real party in interest is Perry L. Johnson Registrars of Texas, L.P. ("Assignee").

II. RELATED APPEALS AND INTERFERENCES

There are no appeals, interferences or judicial proceedings known to the Appellant, the Appellant's legal representative, or the Assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1 and 9-12 are pending in this application. Claims 1 and 9-12 have been rejected and are the subject of this appeal. Claims 2-8 and 13-16 have been cancelled.

IV. STATUS OF AMENDMENTS

None.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 provides an audit quotation system comprising one or more computers configured to receive client information including at least an industry code identifying a type of industry of a product or service provided by a client, a type of quality audit, and a number of employees, Application, p. 20, l. 23 – p. 21, l. 12; Figure 1, 100-106, receive auditor staffing requirements information, wherein the auditor staffing requirements information is based on the number of employees, Application, p. 21, l. 13 – p. 22, l. 21; Figure 1, 110, generate a formal quotation using a computer database application for an audit based on the client information and the auditor staffing requirements information, Application, p. 22, l. 22 – p. 23, l. 7; Figure 1, 120, store formal quotation information in the computer database application for tracking existing and prospective clients, Application, p. 22, l. 22 – p. 23, l. 7; Figure 1, 130, and transmit the formal audit quotation to a salesperson for delivery to the client, Application, p. 23, ll. 8-17; Figure 1, 150.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claim 1 is rejected under 35 U.S.C. 103(a) as being obvious over U.S. Pat. No. 5,765,138 (Aycock) and U.S. Pat. No. 2002/0010614 (Arrowood). Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being obvious over Aycock, Arrowood and U.S. Pat. No. 6,154,753 (McFarland). Claim 11 is rejected under 35 U.S.C. 103(a) as being obvious over Aycock, Arrowood and U.S. Pat. Pub. 2002/0138377 (Weber). Claim 12 is rejected under 35 U.S.C. 103(a) as being obvious over Aycock, Arrowood, Weber and "Auditor selection and audit committee characteristics" (Abbott).

VII. ARGUMENT

A. Claim 1 is patentable under 35 U.S.C. 103(a) over Aycock and Arrowood.

The Examiner has not found each and every limitation of the claims.

With regard to claim 1, Aycock does not receive client information including an industry code identifying a type of industry of a product or service provided by a client. Instead, Aycock merely discusses a supplier interface that permits a supplier to receive information from and provide information to a database:

The system may also include a supplier interface enabling a supplier to send and receive information to the supplier evaluation system. The supplier interface enables a supplier to electronically download the RFP/RFQ, which may be in the form of an executable code or a protected data file. The supplier interface may also enable the supplier to electronically upload the supplier responses to the supplier evaluation system. In addition, the supplier interface may allow a supplier to selectively access the databases of the supplier evaluation system in order to receive information on existing vendor performance reports or product updates, as well as download specifications relevant to the particular RFP/RFQ.

According to the present invention, the supplier self-evaluation system comprises a RFP/RFQ template file comprising the project requirements determined by the buyer, a plurality of specification files that include selected portions of standard specifications referenced in the RFP/RFQ, a communication module enabling access to a remote database having complete files of the standards identified in the RFP/RFQ, and a word processing based computer system having an access routine to selectively access the specification files and the remote database in response to user requests. The access routine selectively accesses the local specification files and the communication software to provide information to a user operating the word processing system based on user requests for information. In response to user inputs, the word processing based system generates a vendor response file including the supplier responses to the requirements identified in the RFP/RFQ template file. Thus, the supplier self-evaluation system enables interactive access to data files necessary for completion of the supplier responses to the RFP/RFQ requirements in an efficient manner.

Aycock, col. 3, l. 62 - col. 4, l. 40.

Nothing in the above discloses receiving an industry code. For example, an “RFP/RFQ . . . in the form of an executable code” is not, of course, an industry code identifying a type of industry

of a product or service provided by a client. An executable code is software in a form that can be run by a computer. The mere mention of the word “code” in Aycock does not somehow disclose the limitation at issue.

In response, the Examiner argues that

Aycock discloses “the maturity requirements that are established from ISO 9001-model for quality assurance and design, production, installation and servicing” (Col. 5, lines 19-25); “the completed RFP/RFQ is received from the supplier, and includes the supplier responses to RFP/RFQ requirements...after the completed RFP/RFQ including the supplier responses is received from the supplier in step, the supplier responses to the maturity questions are analyzed” (Col. 6, lines 5-17).

Office Action, August 16, 2010, p. 2.

Appellant submits, however, that “maturity requirements” and “supplier responses to RFP/RFQ” are not the claimed industry code.

With regard to claim 1, Aycock does not receive client information including a type of quality audit: (1) The Examiner admits that “Aycock . . . does not disclose . . . a type of quality audit . . .,” Office Action, August 16, 2010, p. 7; and (2) The Examiner does not cite any portions of Arrowood for this limitation, see, Office Action, August 16, 2010.

In response, the Examiner argues that

Aycock discloses “a supplier interface, which may be in the form of an executable code or a protected data file” (Col. 3, lines 61-66); “the access routine selectively accesses the local specification files and the communication software to provide information to a user operating the word processing system based on user requests for information” (Aycock Col. 4, lines 30-33). The supplier evaluation system ...stores existing vendor performance reports, prior on site audit reports, and supplier responses” (Aycock Col. 9, lines 37-50). However, Arrowood teaches “a client monitor track references numbers for employees working for the client. Tracking system that allows firm managers to track all the employees who have worked at the firm according to such areas as dates worked, tasks performed” (Arrowood, ¶ 0015).

Office Action, August 16, 2010, pp. 2-3.

Appellant submits, however, that Aycock's "executable code," "local specification files," and storing of "vendor performance reports, prior on site audit reports, and supplier responses" does not disclose receiving client information including a type of quality audit. Likewise, Appellant submits that Arrowood's "[t]racking system that allows firm managers to track all the employees who have worked at the firm according to such areas as dates worked, tasks performed" does not disclose receiving client information including a type of quality audit.

With regard to claim 1, Aycock does not generate a formal quotation using a computer database application for an audit based on the client information and the auditor staffing requirements information: (1) The Examiner admits that "Aycock . . . does not disclose 'receive' auditor staffing requirements 'information . . .,'" Office Action, August 16, 2010, p. 7; and (2) The teachings of Aycock that the Examiner relied on to support this limitation (*i.e.*, col. 1, ll. 45-48) are part of the background section in Aycock; they describe teachings in the prior art for Aycock. The Examiner has not shown that these teachings are themselves incorporated into Aycock.

In response, the Examiner argues that

Aycock discloses . . . "a supplier may selectively access local database files on the CD-ROM for information..., or may remotely access the supplier evaluation system databases for supplemental information" (See abstract); "after the necessary quality maturity requirements have been selected...the process continues to apply the requirements to the request for proposal/request for quotation (RFP/RFQ), ... the supplier responses may be in written form, or may be electronically stored on a tangible medium, such as a floppy diskette, a nonvolatile memory card, etc" (Col. 5, lines 66-67 to Col. 6, lines 1-13).

Office Action, August 16, 2010, pp. 3-4.

Appellant submits, however, that the above does not disclose the limitation at issue.

The Examiner fails to establish a *prima facie* case of obviousness.

The following conclusory reasoning is repeatedly used by the Examiner in rejecting claim 1:

[i]t would have been obvious [to combine the prior art references] [s]ince the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combinations were predictable.

Office Action, August 16, 2010, pp. 7-9.

“The Federal Circuit[, however,] has stated that ‘rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.’” MPEP 2142. Here, the Examiner fails to provide any such reasoning justifying the conclusions that “in the combination each element merely would have performed the same function as it did separately” and “one of ordinary skill in the art would have recognized that the results of the combinations were predictable.” Additionally, “[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.” MPEP 2142 (emphasis added). The Examiner cannot carry his initial burden merely through the repeated use of the above conclusory and unsupported reasoning—especially when trying to justify the combination of numerous references. To allow such would improperly create circumstances where the Appellant is effectively burdened with the initial task of establishing nonobviousness. See, MPEP 2142 (“If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.”)

B. Claims 9 and 10 are patentable under 35 U.S.C. 103(a) over Aycock, Arrowood and McFarland.

Claims 9 and 10 are patentable because they depend from claim 1.

C. Claim 11 is patentable under 35 U.S.C. 103(a) over Aycock, Arrowood and Weber.

Claim 11 is patentable because it depends from claim 1.

D. Claim 12 is patentable under 35 U.S.C. 103(a) over Aycock, Arrowood, Weber and Abbott.

Claim 12 is patentable because it depends from claim 1.

The fee of \$540.00 as applicable under the provisions of 37 C.F.R. § 41.20(b)(2) is enclosed. Please charge any additional fee or credit any overpayment in connection with this filing to our Deposit Account No. 02-3978.

Respectfully submitted,

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Enclosure – Appendices

VIII. CLAIMS APPENDIX

1. An audit quotation system comprising:
one or more computers configured to
receive client information including at least an industry code identifying a type of industry of a product or service provided by a client, a type of quality audit, and a number of employees;
receive auditor staffing requirements information, wherein the auditor staffing requirements information is based on the number of employees;
generate a formal quotation using a computer database application for an audit based on the client information and the auditor staffing requirements information;
store formal quotation information in the computer database application for tracking existing and prospective clients; and
transmit the formal audit quotation to a salesperson for delivery to the client.
9. The system of claim 1 wherein the industry code comprises the Standard Industrial Classification (SIC) code established by the United States Department of Commerce.
10. The system of claim 1 wherein the type of audit is selected from an environmental audit, a quality system audit, a pre-assessment audit, an initial registration audit, a registration upgrade audit, and a surveillance audit.
11. The system of claim 1 wherein the industry code includes a hierarchical classification system having major and minor classifications.
12. The system of claim 11 wherein the one or more computers are further configured to assign auditors based on the industry code.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.